

NTSB Order No. EA-4946

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of February, 2002

Respondent .

Docket SE-16123

Respondent appeals the written initial decision of Administrative Law Judge Patrick G. Geraghty, issued on April 6, 2001.¹ By that decision, the law judge affirmed the violations of sections 61.15(d) and 61.15(e) of the Federal Aviation Regulations ("FARs"), as alleged in the Administrator's Order of

¹ The initial decision is attached.

Suspension.² The law judge, however, modified the 150-day suspension of respondent's private pilot certificate sought by the Administrator to an 80-day suspension. We deny respondent's appeal.

Two alcohol-related motor vehicle actions are at issue here: respondent's November 30, 1994 conviction for driving while ability impaired ("DWAI"), incurred before he became a certificated airman, and a December 6, 1996 DWAI conviction incurred after he obtained his private pilot certificate.³ Respondent did not report the 1996 alcohol-related motor vehicle action to the FAA Civil Aviation Security Division within the

² FAR § 61.15 -- 14 C.F.R. Part 61 -- states:

§ 61.15 Offenses involving alcohol or drugs.

* * * * *

(d) Except in the case of a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for --

* * * * *

(2) Suspension or revocation of any certificate or rating issued under this part.

(e) Each person holding a certificate issued under this Part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AAC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action. . . .

³ On January 8, 1996, respondent obtained a third-class medical/student pilot certificate by an aviation medical examiner; respondent reported the 1994 alcohol-related motor vehicle conviction on that application.

required 60-day deadline, but he did note it on an October 8, 1999 medical application.⁴

The law judge held that respondent violated section 61.15(d) because he was a certificated airman at the time of the 1996 alcohol-related motor vehicle action, which was within three years of the 1994 conviction, and specifically concluded that it was inconsequential that in 1994 respondent was not an airman.⁵ The law judge upheld the section 61.15(e) charge because respondent admittedly did not make the required report to the FAA Civil Aviation Security Division. However, as previously indicated, the law judge reduced respondent's suspension.⁶

On appeal, respondent claims that the law judge erred in upholding the section 61.15(d) violation, and argues that an 80-day suspension is unwarranted or, in the alternative, too severe. Respondent, however, offers no real argument in support of his claim that section 61.15(d) is not applicable, except to note that an FAA website providing guidance on the FAA's "DUI/DWI Program History" refers to "pilot" convictions and that respondent was not a pilot when he incurred his first alcohol-

⁴ Respondent notified the FAA Civil Aviation Security Division of the 1996 DWAI conviction via a February 1, 2000 letter.

⁵ There was no dispute as to the factual issues alleged in the Administrator's complaint, so, in lieu of a hearing, the law judge sought briefs from both parties on the issues of sanction and the applicability of section 61.15(d) to respondent's circumstances.

⁶ The Administrator did not appeal the law judge's sanction modification.

related motor vehicle action. This argument is unconvincing. Section 61.15(d) is exclusively concerned with conduct outside the scope of an airman's certificate. It thus makes no difference whether a reportable violation took place before or after someone became an airman, because an individual's status as an airman is relevant only because it makes the regulation applicable to him or her.⁷ Respondent demonstrates no error in the law judge's plain-meaning interpretation of the applicability of section 61.15(d) to respondent's circumstances.⁸

As for sanction, an 80-day suspension is in accord with precedent. See, e.g., Administrator v. Kralej, NTSB Order No. EA-4581 at 5 (1997) (upholding 120-day suspension for violation of FAR section 61.15(d)); Administrator v. Kearney, NTSB Order No. EA-4208 (1994) (30-day suspension upheld for violation of FAR section 61.15(e)).⁹ Respondent has not established that a

⁷ Moreover, we note that FAR section 61.15(d)(1) states that alcohol-related motor vehicle actions are grounds for "denial of an application for any certificate ... issued under [Part 61]," which supports the Administrator's contention that alcohol-related motor vehicle actions occurring prior to obtaining an airman certificate were contemplated by the rulemaking and are relevant to a proceeding brought under 61.15(d).

⁸ Respondent also argues that the FAA's issuance of a first-class medical certificate, subsequent to his reporting of the alcohol-related motor vehicle actions, demonstrates that the Administrator is erroneously seeking to suspend his airman certificate contrary to the policy behind section 61.15(d). The problem with this argument is that medical certificates are issued under Part 67, but section 61.15(d) refers to certificates issued under Part 61; issuance of a medical certificate is not germane to enforcement action taken against an airman certificate. See footnote 7, supra.

⁹ Contrary to respondent's arguments, Administrator v. Smith,
(continued . . .)

further reduction of sanction is warranted in the public interest.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision upholding the Administrator's Order of Suspension is affirmed; and
3. The 80-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.¹⁰

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(continued . . .)

NTSB Order No. EA-4088 (1994), is inapposite because there is no evidence that respondent here relied to his detriment on incorrect or incomplete guidance obtained from the FAA.

¹⁰ Respondent must physically surrender his airman certificate to an appropriate representative of the Administrator, in accordance with FAR section 61.19(f).